

D.T.E. 02-29-4

Adjudicatory proceeding regarding the complaint of Melissa Allemang concerning the services provided by Qwest Communications.

APPEARANCES: Melissa Allemang
7 Maple Street
Great Barrington, MA 01230
pro se
Petitioner

Damian R. LaPlaca, Esq.
LeBoeuf, Lamb, Greene & MacRae, L.L.P.
260 Franklin Street
Boston, MA 02110

For: QWEST COMMUNICATIONS CORP.
Respondent

I. INTRODUCTION

On March 11, 2002, Melissa Allemang (“Complainant”), pursuant to G.L. c. 93, § 108 et seq., filed a complaint with the Department of Telecommunications and Energy (“Department”) alleging that Qwest Communications Corporation (“Qwest” or “Company”) switched her regional telephone service without authorization.¹ Qwest submitted a letter stating that any unauthorized switch was conducted by a reseller of Qwest services, World Comm. Satellite Systems (“WCSS”), and that Qwest had been billing the Complainant at casual rates.² On May 25, 2002, the Complainant challenged the veracity of the authorization as provided by Qwest.

On June 11, 2002, pursuant to notice duly issued, the Department conducted an evidentiary hearing. Ms. Allemang testified on her own behalf. The Company sponsored the testimony of Jonathan Mann from Qwest’s government affairs office.

II. WAS THE SWITCH OF MS. ALLEMANG’S LONG DISTANCE TELEPHONE SERVICE AUTHORIZED?

A. Positions of the Parties

1. Complainant

The Complainant submitted her invoices from WCSS and Qwest for long-distance and

¹ Pursuant to 220 C.M.R. § 13.02, any unauthorized change to a customer’s primary interexchange carrier or local exchange carrier is known as “slamming.”

² Qwest states that casual rates are billed to individual accounts where a customer utilizes the Qwest network but is not a subscriber with a formal account for Qwest services (Tr. at 27). In such a circumstance, Qwest bills for the usage on the account directly through the local-exchange provider (“LEC”) (id.).

regional charges incurred from November 14, 2001 through February 13, 2002 (Exhs. Consumer-1; Qwest-2). Ms. Allemang testified that during October 2001, she had established regional and long-distance service with WCSS, and further, that she discontinued this service on December 3, 2001 (Exhs. Consumer-1; Consumer-3; Qwest-1; Tr. at 29-32). The Complainant maintained that at no point had she authorized Qwest as her carrier for regional and long-distance service (Exh. Consumer-4; Tr. at 8). The Complainant testified that she discovered the alleged slam when she received a letter from Verizon stating that she may not be aware that her carrier had been switched (Tr. at 11). Following this, the Complainant contacted Verizon to have her service switched back (Tr. at 11-12). In the course of her conversations with Verizon, Ms. Allemang became aware of several phone bills she had received from Qwest for her regional and long-distance telephone service, starting on or about December 3, 2001 (Exh. Qwest-3; Tr. at 12). Ms. Allemang acknowledged discontinuing service with WCSS, but denied authorizing the switch in service to Qwest (Exh. Consumer-4; Tr. at 31). Ms. Allemang's regional and long-distance service was transferred to Verizon on January 17, 2002 (Exh. Consumer-2; Tr. at 21, 22, 34).

2. Qwest

Qwest stated that the switch to Qwest service was a result of the disconnection conducted by WCSS on December 3, 2001, and not a result of any incidences of slamming on the part of Qwest (Exh. Qwest-3; Tr. at 25-27, 34). Qwest further stated that it did nothing to initiate a change in Ms. Allemang's regional and long-distance service but that following deactivation of Ms. Allemang's WCSS account on December 3, 2001, she continued to receive

service from Qwest as a nonsubscriber (Exhs. Qwest-3; Tr. at 25, 28). Qwest testified that WCSS is a reseller of Qwest services, and as such Qwest does not typically interact with the end user of those services (Exh. Qwest-3; Tr. at 28). Qwest provided a credit to Ms.

Allemang's account in the amount of \$435.84 pending the outcome of this investigation (DTE-RR-1; July 19, 2002 Letter from Damian LaPlaca, Esq., to the Hearing Officer).

III. STANDARD OF REVIEW

Pursuant to G.L. c. 93, § 109(a), a change in a customer's primary interexchange carrier ("IXC") shall be considered to have been authorized only if the IXC or local exchange carrier ("LEC") that initiated that change provides confirmation that the customer did authorize such change either through a signed Letter of Authorization ("LOA") or oral confirmation of authorization through Third Party Verification ("TPV") obtained by a company registered with the Department to provide TPV services in the Commonwealth.

Pursuant to G.L. c. 93, § 110 (i), the Department shall hold a hearing to determine, based on our review of the LOA or TPV and any other information relevant to the change in telephone service, whether the customer did authorize the carrier change.

In addition to the Massachusetts slamming law set forth above, the Federal Communications Commission ("FCC") implemented new slamming liability rules in May 2000. Corrected Version First Order on Reconsideration, CC Docket No. 94-129 (May 3, 2000) ("Corrected Order"). In accordance with those rules, the company that switches a customer's telephone service without authorization must pay the customer's authorized company a penalty equal to 150 percent of the charges received from the customer.

The authorized company is then required to return one third of that amount, or 50 percent of what the customer paid to the unauthorized carrier, to the customer. See 47 C.F.R. § 64.1140. In the Corrected Order, the FCC concluded that states should have primary responsibility for administering their slamming liability rules (See ¶¶ 22-28, 33-37, 52, 84). On November 3, 2000, pursuant to 47 C.F.R. § 64.1110, the Department provided to the FCC its State Notification of Election to Administer FCC Rules (See Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, November 3, 2000).

IV. ANALYSIS AND FINDINGS

In accordance with G.L. c. 93, § 110(i) the Department conducted a hearing on June 11, 2002, to determine whether the change in the Complainant's regional and long-distance carrier was authorized. Qwest stated that it had not switched the Complainant's regional and long-distance telecommunications services, and that through no initiative of its own, Qwest had become the Complainant's carrier as a default provider after WCSS had discontinued its service and the Complainant had failed to indicate a preference for a new provider (Tr. at 25-27). Thus, the Department finds that while Qwest provided regional and long-distance service to Ms. Allemang without her authorization, it did not initiate a slam as provided by statute. Rather, Qwest appears to have become Ms. Allemang's regional and long-distance provider as a result of inaction by WCSS and the Complainant's failure to select a new provider.

The Department finds that Qwest did not initiate this unauthorized switch in Ms. Allemang's regional and long-distance service. Further, the Department recognizes that

WCSS has credited the Complainant's account for charges incurred during the period of their provisioning of service to the Complainant.³ Therefore, the Department need not address the penalty provisions as presented in G.L. c. 93, § 112 and 47 C.F.R. § 64.1140.

V. ORDER

Accordingly, after notice, hearing, consideration, and determination, the Department finds that Qwest Communications Corporation did not violate the provisions of Massachusetts G.L. c. 93, § 109(a) in its provision of long-distance telephone service to Ms. Melissa Allemang.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

³ The \$103.64 credit applied to Ms. Allemang's account by WCSS represents a re-rate of the calls made from October 13, 2001 through December 3, 2001 and a full refund of all service charges (DTE-RR-2).

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).